

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Valentina Concha-Toro	Team: Squad #15	CCRB Case #: 202004321	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 11:20 PM	Location of Incident: Tompkins Avenue and Lexington Avenue	Precinct: 79	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 05/30/2020 1:14 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/17/2020 11:09 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Thomas Bay	13631	960217	079 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mohamed Elhanafi	15082	955897	079 PCT
2. SGT Frederick Manney	04797	949938	090 PCT
3. DI Timothy Skretch	00000	926130	079 PCT
4. INS Edward Caban	00000	900040	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Thomas Bay	Force: Police Officer Thomas Bay used physical force against § 87(2)(b)	
B. An officer	Force: An officer used physical force against an individual.	

Case Summary

On May 30, 2020, § 87(2)(b) submitted this complaint with IAB on the phone. On June 17, 2020, the CCRB received the complaint via IAB log #20-14532.

This complaint resulted from the 2020 police brutality protests.

At approximately 11:20 p.m. on May 29, 2020, in front of the 79th Precinct stationhouse in Brooklyn, there was a protest which § 87(2)(b) attended with multiple other civilians including her friend, § 87(2)(b) and § 87(2)(b)'s friend, § 87(2)(b). In the vicinity of the intersection of Tompkins Avenue and Lexington Avenue, PO Thomas Bay of the 79th Precinct and multiple other officers began dispersing the group of civilian protesters. PO Bay placed his hands on § 87(2)(b) and pushed her (**Allegation A: Force** § 87(2)(g)). As § 87(2)(b) walked away from the intersection, she observed a police officer grab a female individual by her ponytail and push her face down on the ground (**Allegation B: Force** § 87(2)(g)). § 87(2)(b) walked away from the intersection. § 87(2)(b) was not arrested or issued a summons.

No video, including any BWC video, was found for this incident (Board Review 01).

Allegation (A) Force: Police Officer Thomas Bay used physical force against § 87(2)(b).

The 79th Precinct stationhouse is located at the southeast corner of Tompkins Avenue and Greene Avenue in Brooklyn. Herbert Von King Park is located on the northwest corner of Tompkins Avenue and Greene Avenue. The intersection of Tompkins Avenue and Lexington Avenue is one block south of the 79th Precinct stationhouse. Tompkins Avenue is a southbound one-way street, Greene Avenue is an eastbound one-way street, and Lexington Avenue is a westbound one-way street. On the south end of the 79th Precinct stationhouse's building is a parking lot for the use of the 79th Precinct employees.

It is undisputed that on May 29, 2020, there was a protest in front of the 79th Precinct stationhouse involving approximately 80 to 100 civilians and 60 to 70 police officers from various commands. The civilian protesters stood at the northwest corner of Tompkins Avenue and Greene Avenue in front of Herbert Von King Park, and south on Tompkins Avenue between Greene Avenue and Lexington Avenue facing toward the stationhouse. Multiple police officers from the 79th Precinct and various other commands stood in front of the stationhouse facing the civilians. Many officers were dressed in riot gear with helmets and black unextendable batons. At approximately 11:30 p.m. § 87(2)(b) was standing on Tompkins Avenue between Greene Avenue and Lexington Avenue. PO Bay was standing in the line of officers and was in front of § 87(2)(b). § 87(2)(b) was in close proximity but there were a few civilians between herself and § 87(2)(b). The line of police officers moved toward the civilians and instructed them to disperse.

§ 87(2)(b) and § 87(2)(b) stated (Board Review 02 and 03) that they did not know what caused the police officers to approach the civilians and instructed them to disperse. The group of civilians, including § 87(2)(b) and § 87(2)(b) began moving away from the area. PO Bay approached § 87(2)(b) and instructed her to leave the area. § 87(2)(b) began walking southbound on Tompkins Avenue. § 87(2)(b) turned around and faced PO Bay. PO Bay placed both of his open palms on the front of her chest between the tops of her breasts and her shoulders. § 87(2)(b) did not recall if he touched § 87(2)(b) in this manner with one or both hands. PO Bay pushed § 87(2)(b). PO Bay placed his hands on § 87(2)(b) multiple times and pushed her. § 87(2)(b) turned around and PO Bay placed his open hands on her back and pushed her. § 87(2)(b)

§ 87(2)(b) stated that PO Bay reached one hand toward § 87(2)(b)'s bicep and wrapped his fingers around it. Multiple protesters approached and placed their bodies between § 87(2)(b) and PO Bay causing him to release her arm. During a follow-up call (Board Review 04), § 87(2)(b) clarified that she stumbled slightly but at no point did she lose her balance or fall to the ground. § 87(2)(b) did not receive any injuries or any bruises.

Neither § 87(2)(b) nor § 87(2)(b) knew § 87(2)(b)'s surname. Neither of them had any contact information for § 87(2)(b) and therefore no statement was obtained from him.

On May 30, 2020, a separate complaint - CCRB case number 202003707 was filed regarding another incident during the same protest on May 29, 2020, in front of the 79th Precinct stationhouse. That incident occurred at the northwest corner of Tompkins Avenue and Greene Avenue, which was approximately half a block from this incident location. § 87(2)(b) and § 87(2)(b) were victims in CCRB case 202003707. They all stated (Board Reviews 19-23) that a few minutes before the officers advanced on the protesters, an unidentified male protester either threatened to throw a rock at the officers or suggested to the other protesters that they throw rocks. None of them knew who the male was. They denied that the male or any other protesters threw anything at the police.

PO Bay stated (Board Review 05) that the group of civilians were throwing bottles at the line of police officers and a bottle struck an officer in the chest. The line of officers advanced toward the group of civilians to disperse them because they were concerned that the group had become too dangerous. PO Bay did not know whether it was a specific supervisor or officer who made the decision to approach the civilians. PO Bay placed his black nonexpendable baton horizontally in both hands and extended it out in front of him. PO Bay pushed civilians with the side of his baton. § 87(2)(b) was not moving, and PO Bay placed his baton horizontally against § 87(2)(b)'s torso and put pressure on it so that she would move. § 87(2)(b) told PO Bay not to touch her. PO Bay denied that he made any contact with § 87(2)(b) with his hands. PO Bay denied that he or any other officer placed an open hand on § 87(2)(b)'s upper chest and pushed her. PO Bay denied that he or any officer grabbed § 87(2)(b) on her bicep.

PO Elhanafi stated (Board Review 06) that he was standing toward the southwest corner of the intersection of Tompkins Avenue and Greene Avenue and was facing Herbert Von King Park. PO Elhanafi was not aware of where PO Bay was standing during the protest. One of the male civilians in the group in front of Herbert Von King Park held up a rock in his hand and threatened to throw it at the police officers. From behind the police officer line, instructions were issued to disperse the civilian crowd, although PO Elhanafi did not know who issued the command. The officers placed their black batons horizontally in both hands, holding each end with one hand and began approaching civilians with the baton in front of them. PO Elhanafi moved northbound on Tompkins Avenue. PO Elhanafi did not see any officer place both of their hands on a female's upper chest. PO Elhanafi did not see PO Bay place his hands on a female individual's upper chest. PO Elhanafi did not see an officer push a female. PO Elhanafi denied that he saw PO Bay grab a female individual by the bicep.

DI Skretch stated (Board Review 07) that he was not scheduled to work on May 29, 2020, but at approximately 9:30 p.m. he received a call from the Patrol Borough Brooklyn North commander to respond to the 79th Precinct stationhouse. DI Skretch was informed that there had been a protest at the 88th Precinct stationhouse which was a neighboring precinct. DI Skretch arrived in the vicinity of the 79th Precinct stationhouse at approximately 11:00 p.m. DI Skretch drove his vehicle northbound on Tompkins Avenue, passing through Lexington Avenue until reaching the stationhouse's parking lot. He did not observe any civilians at the intersection of Tompkins Avenue

and Lexington Avenue. DI Skretch walked into the stationhouse and dressed in uniform. He exited the stationhouse and walked out to the intersection of Tompkins Avenue and Greene Avenue. DI Skretch is familiar with PO Bay but did not recall seeing him at the time of the incident.

Insp. Caban stated (Board Review 08) that on May 29, 2020, he was the adjutant for Patrol Borough Brooklyn North which is an administrative position. On May 29, 2020, Insp. Caban was not provided any information regarding any protest, or how to handle arrests or summonses. Insp. Caban did not issue any commands to officers regarding how to process arrests or summonses. Insp. Caban arrived at the 79th Precinct stationhouse because he had been monitoring Brooklyn north to assure there were appropriate numbers of officers deployed throughout the borough. Insp. Caban joined the line of officers who stood at the intersection of Tompkins Avenue and Greene Avenue. Insp. Caban did not see any group of civilians at the intersection of Tompkins Avenue and Lexington Avenue. Insp. Caban did not know where PO Bay was at the time of the protest in front of the 79th Precinct stationhouse.

There was no video obtained capturing the interaction between PO Bay and § 87(2)(b) No BWC videos were obtained (Board Review 01). No AIDEDs, TRIs, or memo book entries were made reflecting the incident with § 87(2)(b) (Board Reviews 09, 10, and 13). An arrest report and a TRI for the same protest incident but not related directly to this complaint, noted that a male individual threw a glass bottle at an officer striking him in the stomach, and that the civilian group was issued instructions to disperse pursuant to the incident (Board Review 12).

Based on the information provided by the civilians and officers, there were approximately 30 more civilians than officers. The investigation is crediting that the police officers present were issued a command to disperse the crowd because of how they advanced on the group of civilians in unison. The investigation was unable to determine who issued the command or what specific instructions were provided to the officers. The crowd of civilians were instructed by the lines of officers to leave the area. PO Bay instructed § 87(2)(b) to disperse and § 87(2)(b) turned around to face him. Based on the civilian statements and PO Bay's statement, it was corroborated that PO Bay did make physical contact § 87(2)(b) while in the midst of dispersing the civilian crowd. The investigation weighed the statements provide by both civilians and police officers. It remains in dispute whether PO Bay used his hands or side of his baton to make contact with § 87(2)(b)

According to NYPD Patrol Guide, Sections 221-01 and 221-02 (Board Review 14), it is permissible for an officer to use force when reasonable to ensure the safety of a member of the service or a third person. When determining reasonable force, an officer should consider the nature and severity of the circumstances, actions taken by the subject, number of subjects in comparison to the number of officers present, and the size, age and condition of the subject in comparison to the officer.

Since the investigation was not able to determine whether PO Bay used his hands or side of his baton, the allegation will be analyzed with the consideration of whether PO Bay could have used any force during the incident.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Force: An officer used physical force against § 87(2)(b)

Known Facts and General Description

It is undisputed that on May 29, 2020, there was a protest in front of the 79th Precinct stationhouse involving multiple civilians and police officers from various commands. Multiple police officers from the 79th Precinct and various other commands stood in front of the stationhouse facing the civilians. Many officers were dressed in riot gear with helmets and black, unextendable batons.

§ 87(2)(b) and § 87(2)(b) stated (Board Reviews 02 and 03) that after § 87(2)(b)'s interaction with PO Bay, they walked away from Greene Avenue, southbound on Tompkins Avenue toward Lexington Avenue. In the vicinity of Lexington Avenue and Tompkins Avenue, a small group of individuals were walking northbound on Tompkins Avenue. In the small group was a female individual who § 87(2)(b) described her as a 5'7" tall white female with a medium build in her 20s or 30s wearing jean shorts and her hair was in a ponytail. There were multiple civilians between the female individual and where § 87(2)(b) and § 87(2)(b) were walking. Multiple officers approached the group and instructed them to disperse. The female individual turned around and began walking southbound. A male officer, which neither § 87(2)(b) or § 87(2)(b) were able to provide any physical descriptions for, approached the female and pushed her back so that she would move forward quicker. The female individual turned to face the male officer and appeared to spit in his direction. The male officers grabbed the female individual by her ponytail and pushed her face down to the ground. Both § 87(2)(b) and § 87(2)(b) walked away and did not observe anymore of the incident. Neither § 87(2)(b) nor § 87(2)(b) were aware of whether the female individual was placed in handcuffs, sustained injuries, or how the incident ended.

BWC

No BWC videos were found for this incident (Board Review 01).

NYPD Documents

Searches for arrests were conducted for the parameters of May 29, 2020, from 10:00 p.m., until May 30, 2020, at 4:00 a.m. in the 79th Precinct. The search yielded negative results for any female individuals. The 79th Precinct command log was received and there was no reference to a female civilian present in the stationhouse in need of medical assistance, arrested or not (Board Review 11). There were negative results for any AIDED or TRI prepared for a female individual (Board Reviews 09, 10, 12). A detail roster reflected that officers from more than 15 different commands had been dispersed to Brooklyn on May 29, 2020, but the detail roster does not specify exact locations throughout the evening (Board Review 15).

Concurrent Investigations

There are no concurrent investigations.

Ranking Officers

Among the officers identified by the investigation, Insp. Caban was the highest-ranking officer present. He was assigned to Patrol Borough Brooklyn North at the time. DI Skretch was the second highest-ranking identified officer. At the time of the incident, DI Skretch was the assigned commanding officer for the 79th Precinct.

MOS Interviewed

PO Bay was interviewed by the CCRB on August 13, 2020. PO Elhanafi was interviewed by the CCRB on September 15, 2020. DI Skretch was interviewed by the CCRB on September 30, 2020. Insp. Caban was interviewed by the CCRB on November 16, 2020.

PO Bay, PO Elhanafi, Insp. Caban and DI Skretch observed officers from various commands. They did not know which commands were present during the incident.

After his interaction with § 87(2)(b) PO Bay assisted in dispersing the additional civilians present at the location. approached the intersection of Thompson Avenue and Greene Avenue while he assisted in the arrest of § 87(2)(b) PO Bay was not aware of any incident where a civilian spit on an officer. PO Bay did not witness an officer grab a female by the back of her head and push her on the ground. PO Bay was not aware of such an incident having occurred. PO Bay was not aware of any medical services begin requested for a female individual. PO Bay was not aware of any female individuals having been arrested during the incident.

PO Elhanafi was standing toward the southwest corner of the intersection of Tompkins Avenue and Greene Avenue and was facing Herbert Von King Park. After the initial approach of officers to disperse the group of protestors, the group of civilians split. One group moved northbound on Tompkins Avenue past Herbert Von King Park, and the other group moved westbound on Greene Avenue. PO Elhanafi followed the group of northbound protestors, and moved along the west side of Herbert Von King Park. PO Elhanafi was involved in an arrest and entered the 79th Precinct stationhouse with the arrested individual. PO Elhanafi was not aware of any arrest of a female individual at the time of the incident. PO Elhanafi was presented with § 87(2)(b)'s description of the female individual. He did not recognize it as a description of any other female at the protest other than the individual involved in CCRB case 202003707. PO Elhanafi was not made aware that § 87(2)(b) spit on an officer nor did he witness any individual spit on an officer. PO Elhanafi denied that he grabbed a female by her ponytail and pushed her into the ground. PO Elhanafi denied that he saw any officer do so.

DI Skretch arrived in the vicinity of the 79th Precinct stationhouse at approximately 11:00 p.m. DI Skretch drove his vehicle northbound on Tompkins Avenue, passing through Lexington Avenue until reaching the stationhouse's parking lot on the south side of the stationhouse. He did not observe any civilians at the intersection of Tompkins Avenue and Lexington Avenue. DI Skretch walked into the stationhouse and dressed in uniform. He exited the stationhouse and walked out to the intersection of Tompkins Avenue and Greene Avenue. DI Skretch remained at the intersection facing Herbert Von King Park and did not approach Lexington Avenue and Tompkins Avenue. DI Skretch was involved in an arrest and was not aware of an officer having been spat on. DI Skretch was not aware of any officer grabbing a female civilian by the hair and pulling her to the ground.

Insp. Caban arrived at the 79th Precinct stationhouse because he had been monitoring Brooklyn north to assure there were appropriate numbers of officers deployed throughout the borough. Insp. Caban joined the line of officers who stood at the intersection of Tompkins Avenue and Greene Avenue. Insp. Caban did not see any group of civilians at the intersection of Tompkins Avenue and Lexington Avenue. Insp. Caban was involved in an arrest and walked the arrested individual into the stationhouse. Insp. Caban was not aware of any female individual having been arrested. He did not observe any female individuals in the stationhouse. Insp. Caban was not aware of any civilian spitting on any officer, not did he recall being informed that this had occurred. He was not aware of any officer pulling a female civilian's hair and pushing her on the ground. He was not aware of any civilians who were taken to the hospital or that received any medical attention due to the incident.

Disposition

The investigation was unable to identify the subject officer of the allegation that § 87(2)(b) and § 87(2)(b) witnessed. There were a large number of both civilians and officers, both of which remained mostly unidentifiable to the investigation. The victim of the allegation witnessed was not able to be identified with none of the NYPD documents having any record of a female individual involved in an incident following the general contours of the allegation. § 87(2)(b) and § 87(2)(b) did not have any other contact information for any of the civilians present at the protest.

In addition, the subject officer was not able to be identified either by NYPD documents or statements. None of the officers who were interviewed knew whether there were officers standing at the intersection of Lexington Avenue and Tompkins Avenue, and none of them heard of an incident where an officer was spat upon during the protest.

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Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) is a party to (Board Review 16).
- PO Bay has been a member of the service for five years and has been listed as a subject in five previous CCRB complaints and seven allegations, none of which have been substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b)
- As of February 8, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 18).

Investigator: Valentina Concha-Toro Inv. Valentina Concha-Toro August 26, 2021
Signature Print Title & Name Date

Squad Leader: Simon Wang IM Simon Wang 08/26/21
Signature Print Title & Name Date

Reviewer: _____

Signature Print Title & Name Date